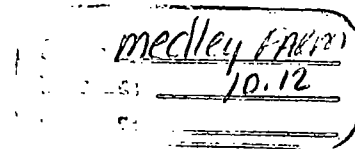


U.S. Department of Justice

DTB:GSM:cw
90-11-3-104



Washington, D.C. 20530

March 30, 1987

DHL EXPRESS

James D. McCoy, III
Assistant United States Attorney
District of South Carolina
Federal Building
300 East Washington Street
Greenville, South Carolina 29603

Re: U.S. v. Ralph C. Medley, et al
Lodging of Consent Decree

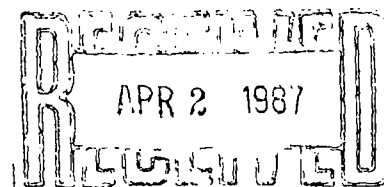
Dear Mr. McCoy:

Enclosed for lodging and entry by the Court is the Consent Decree that has been approved by all the parties with the exception of the individual Medley defendants. Please take the following actions:

- (1) Review the Consent Decree. If it meets with your approval, please execute the document and lodge it with the Court. As explained in the enclosed Notice of Lodging, no action is now required by the Court. Instead, Department policy and the Superfund Amendments and Reauthorization Act of 1986 require that we publish the Notice of Lodging in the Federal Register and accept public comment prior to presentation of the Decree to the Court. See 28 C.F.R. § 50.7 and Section 122(i) of CERCLA, 42 U.S.C. § 9622(i).
- (2) File the Notice of Lodging with the Clerk simultaneously with the lodging of the Consent Decree.
- (3) Notify me by telephone at (FTS) 633-5409 of the date of lodging. Please confirm that date in writing with copies to all counsel of record.

10291101





EPA-REGION IV
ATLANTA, GA.

- (4) No further action will be required of you until the thirty (30) day comment period has run. At that time I will prepare and file the appropriate motion for entry.
- (5) The Federal Register Notice will indicate that copies of the Consent Decree are available at your office. I have enclosed three (3) copies of the Consent Decree to insure that you have adequate copies to accomplish the lodging and maintain a file copy.

Please handle this matter as expeditiously as possible.

Sincerely,

Assistant Attorney General
Land and Natural Resources Division

By:



G. Stephen Manning, Attorney
Environmental Enforcement Section

Enclosure

cc: Judge G. Ross Anderson, Jr.
All Counsel of Record
Kirk MacFarlane, EPA Region IV
Pam Sbar, EPA/OECM

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

UNITED STATES OF AMERICA)
)
 Plaintiff,)
)
 vs.)
)
RALPH C. MEDLEY, et al.)
)
 Defendants.)

CONSENT DECREE

This Decree is made and entered into by and between the United States of America ("Plaintiff") and certain defendants, cross-claimants, counter-claimants, third-party plaintiffs and third-party defendants ("Settling Defendants") in this action: Milliken & Company, Unisphere Chemical Corporation, National Starch and Chemical Corporation and Chas S. Tanner Co., ABCO Industries, Inc., BASF Corporation, Ethox Chemicals, Inc., Polymer Industries, a division of Morton-Thiokol, Inc. and Tanner Chemical Company.

WHEREAS, the United States, on behalf of the Administrator of the Environmental Protection Agency ("EPA"), filed a complaint in this action on January 30, 1986, which action was brought pursuant to Sections 104(a) and (b) and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§9604(a) and (b) and 9607(a), for recovery of costs incurred and to be incurred by the United States in response to the release or threatened release of hazardous substances at the Medley Farm Site ("Site") near Gaffney, South Carolina and pursuant to

28 U.S.C. §2201 for a declaratory judgment of liability for all future response costs incurred in connection with the site;

WHEREAS, several parties have filed third-party complaints, cross-claims and counterclaims seeking contribution and/or indemnity for response costs for which said parties may be found liable;

WHEREAS, Plaintiff alleged that it has incurred and will incur response costs in connection with the cleanup of the Medley Farm Site as described in Plaintiff's Complaint;

WHEREAS, Plaintiff alleges that Settling Defendants are liable for past and future response costs associated with the cleanup of the Medley Farm Site;

WHEREAS, the Medley Farm Site has been proposed for inclusion on the fifth update to the National Priorities List (Appendix B to the National Oil and Hazardous Substances Contingency Plan, 40 C.F.R. Part 300 et seq.);

WHEREAS, the parties agree that a Remedial Investigation and Feasibility Study ("RI/FS") may be needed for the Medley Farm Site in order to determine the nature and extent of contamination and to determine the appropriate remedy, if any is required, at the site;

WHEREAS, G. Ross Anderson, Jr., United States District Judge, issued an Order dated 5th November, 1986, finding the Defendants Ralph C. Medley and Clyde Medley, as owner and/or operator of the Medley Site were liable for all costs incurred and to be incurred by the Plaintiff in response to the release or threatened release of hazardous substances at the Medley Farm Site pursuant to Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a); and

WHEREAS, the Defendants Ralph C. Medley, Clyde Medley, Grace Medley, and Barry Medley are not parties to this Consent Decree.

WHEREAS, the parties agree that this Consent Decree constitutes a settlement only of Settling Defendants' liability for the reimbursement of response

costs incurred by the United States at the Medley Farm Site up to and including the date of lodging of the Consent Decree with the Court; and

WHEREAS, the Plaintiff and Settling Defendants agree that settlement of Settling Defendants liability for past response costs and execution of this Consent Decree without further litigation and without any admission as to liability is the most appropriate means of resolving this part of Plaintiffs' claim and is in the public interest.

NOW THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I.

JURISDICTION

This Court has subject matter jurisdiction over this matter and has personal jurisdiction over the parties hereto pursuant to 42 U.S.C. §§9604(a) and (b) and 9613(b) and 28 U.S.C. §§1345. The parties hereto agree to be bound by the terms of this Consent Decree and not to contest its validity in any subsequent proceeding arising from it.

II.

PARTIES BOUND

This Consent Decree shall apply to and be binding upon the Settling Defendants, their officers, directors, agents, servants, employees, successors in interest and assigns, and upon all persons, firms, subsidiaries, divisions, and corporations acting under or for them and upon the United States on behalf of the U.S. EPA. Each undersigned representative certifies that he or she is fully authorized to enter into this Consent Decree and to execute and to legally bind such signatory to this Consent Decree.

III.

DEFINITIONS

Certain terms used in this Consent Decree are defined as follows:

- A. The "Medley Farm Site" means the waste disposal facility owned, as of the filing of the Complaint in this action, by Ralph C. Medley located at or near County Road 72 (Burnt Gin Road) near Gaffney, Cherokee County, South Carolina.
- B. "Response Costs" means all costs, including administrative and enforcement costs, incurred by the United States pursuant to CERCLA and any other applicable laws relating to removal and response actions undertaken up to the date of lodging the Consent Decree with the Court in connection with the Medley Farm Site.
- C. Any term not otherwise defined herein shall have the definition provided in 42 U.S.C. §9601.

IV.

REIMBURSEMENT FOR PAST COSTS

Within thirty (30) days of the entry of this Consent Decree, the Settling Defendants shall pay a total of Five Hundred and Sixty Thousand Dollars (\$560,000) to the United States in reimbursement of response costs incurred by the United States with respect to the Medley Farm Site up to and including the date of the lodging of the Consent Decree. This amount shall be made payable by certified or cashiers check to the "EPA Hazardous Substances Response Trust Fund" and shall be remitted to U.S. EPA Superfund, P.O. Box 371003M,

Pittsburgh, Pennsylvania 15251. The transmittal of such payment shall reference that the payment is for response costs incurred at the Medley Farm Site and shall be accompanied by correspondence identifying United States v. Ralph C. Medley, et al., Civil Action No. 7-86-252-3, DOJ File Number 90-11-3-104, EPA File Numbers and the identity of the paying party.

V.

RELEASES

- A. In consideration of the payment set forth in Section IV above, the United States releases Settling Defendants from civil liability for the reimbursement of response costs incurred by the United States at the Medley Farm Site pursuant to Sections 104 and 107 of CERCLA, 42 U.S.C. §§9604, 9607, up to and including the date of the lodging of the Consent Decree.
- B. Nothing in this Consent Decree shall release the Settling Defendants from liability for response costs, if any, incurred by the United States after the date of the lodging of the Consent Decree in connection with any future response to the release or threatened release of hazardous substances into the environment from the Medley Farm Site including, but not limited to, conducting of a Remedial Investigation/Feasibility Study at the site and remedial action.
- C. This release shall not extend to any person or legal entity other than the Settling Defendants.
- D. Settling Defendants hereby remise and release the United States from any and all liability for actions taken and expenditures made by the United States, its agents and employees prior to the entry of this Consent Decree in responding to the release or threatened release of hazardous

substances into the environment from the Medley Farm Site. Further, Settling Defendants agree not to assert any causes of action, claims or demands against the United States for reimbursement from the Hazardous Substances Response Trust Fund, 42 U.S.C. §9631, including claims pursuant to Sections 111 and 112 of CERCLA, 42 U.S.C. §§9611, 9612, or assert any other claims or demands for sums paid in settlement of past response costs or arising from any activity performed or expenses incurred pursuant to this litigation or under this Decree.

- E. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a CERCLA claim within the meaning of 40 C.F.R. §300.25(d).
- F. Pursuant to Section 122(h)(4) of CERCLA as amended by the Superfund Amendments and Reauthorization Act of 1986, the Settling Defendants executing this Consent Decree have resolved their liability to the United States for past response costs to the date of entry of this Decree and shall not be liable for claims for contribution regarding matters addressed in this Decree.

VI.

RESERVATION OF RIGHTS

The United States reserves all claims, demands and causes of action, past or future, judicial or administrative, in law or equity, including but not limited to, cost recovery and injunctive relief and natural resource damages, against any person or entity, including the Settling Defendants, for any matters not covered under this Decree. Nothing contained herein, except as provided in Section V, shall in any way limit or restrict the response and enforcement authority of the United States to initiate appropriate action, either judicial or administrative, against Settling Defendants or against any other person or entity not a party to this Decree under Sections 104, 106 and 107 of

CERCLA, 42 U.S.C. §§9604, 9606 and 9607. Any claim or defense which the Plaintiff or Settling Defendants may have against any other person or entity not a party to this Decree, including but not limited to, claims for indemnity or contribution, is expressly reserved.

In any subsequent action brought under CERCLA by the United States for injunctive relief or recovery of response costs incurred after entry of this Decree, relating to the release or threatened release of hazardous substances into the environment from the Medley Farm Site, the Settling Defendants shall not assert that the United States is in any manner precluded or barred from instituting such an action by the principles of res judicata or rules against claim splitting.

VII.

RETENTION OF JURISDICTION

The Court shall retain jurisdiction of this matter solely for the purpose of enforcing timely payment of the amount set forth in Section IV above.

VIII.

DOCUMENT RETENTION

The United States and the Settling Defendants agree to retain and preserve for a period of five (5) years from the date of the lodging of this Consent Decree all documents produced through discovery and documents requested in discovery but not produced.

IX.

PUBLIC NOTICE AND COMMENT

This Consent Decree is subject to the public notice and comment requirements contained in Section 122(i) of CERCLA as amended by the Superfund Amendments and Reauthorization Act of 1986.

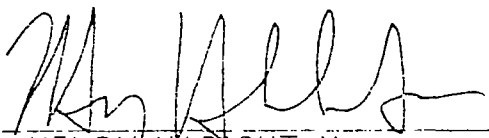
X.

TERMINATION

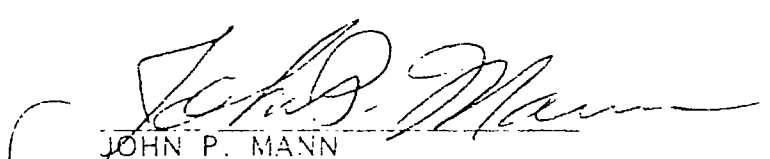
Upon timely payment of the amount set forth in Section IV above by Settling Defendants, the United States and Settling Defendants will jointly file a stipulation of dismissal, with prejudice, between the Plaintiff and the Settling Defendants, as to the United States claim for past response costs incurred through the date of lodging of this Decree and without prejudice as to the government's right to institute an action for future response, cost or injunctive or other relief under Section 104, 106 and 107 of CERCLA, 42 U.S.C.A. Sections 9604, 9606 and 9607 or under any other federal or state law involving matters not herein released pursuant to Section V. The Plaintiff and the Settling Defendants specifically reserve all actions, cross-actions, cross-complaints, third-party causes of action, and counterclaims they may have against Ralph C. Medley, Clyde Medley, Grace Medley and Barry Medley.

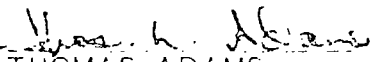
IN WITNESS WHEREOF, the parties by their duly authorized representatives have executed this Consent Decree and submit it to the Court, that it may be approved and entered.

FOR THE PLAINTIFF:

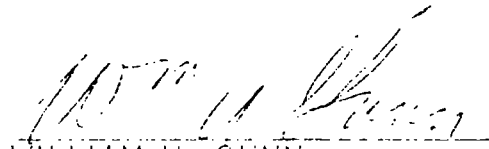

F. HENRY HABICHT II
Assistant Attorney General
Land and Natural Resources
Division
U.S. Department of Justice

FOR THE SETTLING DEFENDANTS:

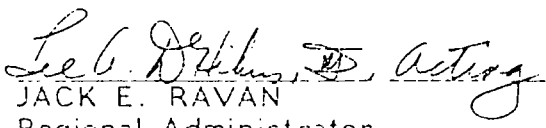

JOHN P. MANN
Thompson, Mann and Hutson
Attorneys for Milliken &
Company


THOMAS ADAMS

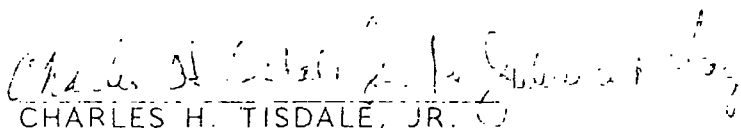
Assistant Administrator for
Enforcement and Compliance
Monitoring
U.S. Environmental Protection
Agency


WILLIAM U. GUNN


Holcombe, Bomar, Wynn & Gunn
Attorneys for Milliken &
Company


JACK E. RAVAN


Regional Administrator
U.S. Environmental Protection
Agency
Region IV
Atlanta, Georgia


CHARLES H. TISDALE, JR.

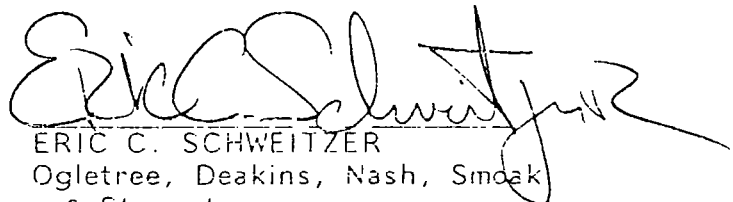
King & Spalding
Attorneys for National Starch
& Chemical Corporation
and Chas. S. Tanner Co.


G. STEPHEN MANNING

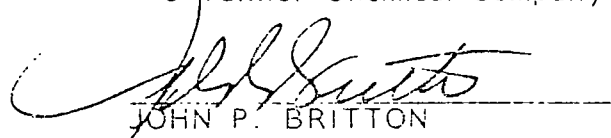
Trial Attorney
Environmental Enforcement Section
Land and Natural Resources
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Scarborough
Attorneys for Unisphere
Chemical Corporation


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Attorneys for ABCO, BASF
Corporation, Polymer Industries,
a division of Morton Thiokol, Inc.
& Tanner Chemical Company


JOHN P. BRITTON


Rainey, Britton, Gibbes & Clarkson
Attorneys for Ethox Chemicals, Inc.

APPROVED AND ENTERED THIS _____ DAY OF _____, 1987.

G. ROSS ANDERSON, JR.
United States District Judge
District of South Carolina

Memorandum



Subject Request for Certification and Transmittal of Federal Register Notice	Date MAR 24 1987
To Charles J. Cooper Assistant Attorney General Office of Legal Counsel	From  F. Henry Habicht II Assistant Attorney General Land and Natural Resources Division

Attached is a notice that a proposed Consent Decree in United States v. Ralph C. Medley, et al. has been lodged with the United States District Court for the District of South Carolina. The Consent Decree ("decree") in this cost recovery action under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9607, requires that the settling defendants pay a total of \$560,000 to the EPA Hazardous Substances Response Trust Fund in reimbursement of response costs incurred by the United States with respect to the Medley Farm Site located near Gaffney, S.C. up to and including the date of the lodging of the decree.

Please certify the notice and forward it to the Federal Register for publication.

Attachment

NOTICE

UNITED STATES DEPARTMENT OF JUSTICE

NOTICE OF LODGING OF CONSENT DECREE PURSUANT TO
THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION
AND LIABILITY ACT IN UNITED STATES v. RALPH C. MEDLEY, ET AL.

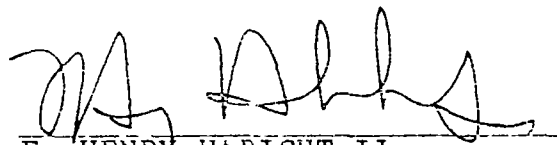
In accordance with Departmental policy, 28 C.F.R. § 50.7, and pursuant to Section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9622(i), notice is hereby given that on _____, 1987 a proposed Consent Decree in United States v. Ralph C. Medley, et al., Civil Action No. 7:86-252-3, was lodged with the United States District Court for the District of South Carolina. The complaint in this CERCLA Section 107, 42 U.S.C. § 9607, cost recovery action was filed on January 30, 1986 against Ralph C. Medley, Clyde Medley, Grace Medley, Barry Medley, Milliken & Company, Unisphere Chemical Corporation and National Starch and Chemical Corporation to recover from defendants all costs incurred and to be incurred by the United States in responding to the release or threatened release of hazardous substances from a waste disposal facility located in Cherokee County, South Carolina known as the Medley Farm Site. The complaint also seeks a declaratory judgment, pursuant to 28 U.S.C. § 2201, that the named defendants are jointly and severally liable for all future response costs which may be incurred by the United States in connection with the site. The proposed Consent Decree ("Decree") provides

that the Settling Defendants, Milliken & Company, Unisphere Chemical Corporation, National Starch and Chemical Corporation and Charles S. Tanner Co., ABCO Industries, Inc., BASF Corporation, Ethox Chemicals, Inc., Polymer Industries, a division of Morton - Thiokol, Inc. and Tanner Chemical Company reimburse, within 30 days of the entry of the decree, the United States \$560,000 of the approximately \$677,500 in past response costs, said sum representing approximately 83% of the total costs incurred to date. The defendants Ralph C. Medley, Clyde Medley, Grace Medley and Barry Medley are not parties to this proposed Consent Decree. The decree releases the Settling Defendants from civil liability only for reimbursement of response costs incurred by the United States at the Medley Farm site up to and including the date of the lodging of the decree but not from liability for any future response costs, including but not limited to, the costs of conducting a Remedial Investigation/Feasibility Study at the site or any future remedial action. The United States expressly reserves all claims, demands and causes of action, past or future, judicial or administrative, in law or equity, including but not limited to, cost recovery and injunctive relief and natural resource damages, against any person or entity, including the Settling Defendants, for matters not covered under the decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. The Department of

Justice will consider any comments in determining whether or not to consent to the proposed settlement and may withdraw its consent to the proposed settlement if such comments disclose facts or considerations which indicate that the proposed Consent Decree is inappropriate, improper or inadequate. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to United States v. Ralph C. Medley, et al., D.J. Ref. No. 90-11-3-104.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the District of South Carolina, Room 318, Federal Building, 300 East Washington Street, Greenville, South Carolina 29601 and the Office of the Regional Counsel, U.S. Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Room 1521, U.S. Department of Justice, 9th & Pennsylvania Ave., N.W., Washington, D.C. 20530. In requesting a copy, please enclose a check in the amount of \$_____ payable to the Treasurer of the United States.

A handwritten signature in dark ink, appearing to read 'F. Henry Habicht II', is written over a horizontal line.

F. HENRY HABICHT II
Assistant Attorney General
Land and Natural Resources Division